

# APPEAL, STAFF REPORT & RECOMMENDATION TO THE HEARINGS EXAMINER

Form DS1701



**Project Name:** ABC TOWING

**Case Number:** APL2004-00021

**Location:** 13417 NE 71<sup>st</sup> Street

**Appellant:** Moss & Associates, Inc.  
Attn.: Geoff Appel  
717 NE 61<sup>st</sup> Street, Suite 202  
Vancouver, WA 98665  
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**Date of Notice:** August 13, 2004

**Hearing Examiner:** Daniel Kearns

**Neighborhood Contact:** Sifton Neighborhood Association  
Steve Hamilton, President  
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Vancouver, WA 98682  
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**Public Hearing Date:** October 7, 2004

## RECOMMENDATION

**Uphold the Planning Director's Determination**

**Team Leader's Initials:** \_\_\_\_\_ **Date Issued:** September 22, 2004

### County Review Staff:

	<u>Name</u>	<u>Phone Ext.</u>	<u>E-mail Address</u>
<b>Planner:</b>	Michael Uduk	4385	<a href="mailto:Michael.Uduk@clark.wa.gov">Michael.Uduk@clark.wa.gov</a>
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<b>Team Leader:</b>	Krys Ochia	4834	<a href="mailto:Krys.Ochia@clark.wa.gov">Krys.Ochia@clark.wa.gov</a>
<b>Engineer Supervisor (Trans. and Stormwater):</b>	Richard Drinkwater, P.E.	4492	<a href="mailto:Richard.Drinkwater@clark.wa.gov">Richard.Drinkwater@clark.wa.gov</a>

### Legal Description:

Tax Lot 52 (158626) in the NW ¼ of Section 11 Township 2 North, Range 2 East of the Willamette Meridian.

**Comp Plan Designation:** Light Industrial (ML)

**Zoning:** Light Industrial (ML)

**Applicable Laws:** Clark County Code Chapters 40.570.080 (SEPA), 40.610 (Impact Fees), 40.230.080 (Industrial Districts), 40.520.040 (Site Plan Review), 40.310 (Signs), 40.570.080 (C) (3) (k) (Archaeology), 40.410 (CARA), 40.350 (Transportation Standards), 40.350.020 (Concurrency), 40.380 (Stormwater and Erosion Control), 40.350.020 (C) (Water Connection), 40.370.020 (C) (Sewer Connection), 15.12 (Fire Protection), 40.510.030 (Procedure)

### Project Description

The applicant is requested a site plan review approval to operate a vehicle towing and police impound storage business on approximately .97 acres zoned ML. The applicant also requested approvals for Critical Aquifer Recharge Areas (CARA) review, an Archaeological predetermination review, and a modification to the transportation standards. (See Exhibit 12 for details.)

### Background

The applicant requested a Site Plan Review approval to operate a vehicle towing and police impound storage business on approximately .97 acres zoned Light Industrial (ML). The ML district provides for a variety of uses and the proposed vehicle towing and police impound business is approvable in the ML District per Table 40.230.080-1 (G) (2), subject to the special provisions of CCC 40.230.080 (D) (5).<sup>1</sup> Staff issued an optional SEPA determination of non-significance (DNS) and notice of the proposed development on May 19, 2004, and the SEPA notice became final on July 24, 2004, when staff issued the Staff Report, approving the request with conditions.<sup>2</sup> The county did not receive any SEPA appeal.

<sup>1</sup> The request could also be approved per Table 40.230.080-1 (E) (48-49) (493) (4931) (49319) (Other warehousing and storage).

<sup>2</sup> The Staff Report did not include Engineering Services review, which was sent to the applicant as an Attachment to the Staff Report on July 23, 2004.

The applicant, through LeAnne M. Bremer of Miller Nash LLP, Attorneys at Law, is challenging two conditions of approval. The first condition challenged by the applicant deals with frontage road improvement as follows:

1. Condition of Approval A-3

"The applicant shall construct a half-width improvements consisting of 18-foot half-width paved roadway, curb & gutter, and a 5-foot wide sidewalk within the existing half-width right-of-way. The proposed improvements shall be transitioned to match the existing roadways at both ends. The applicant shall continue the half-width improvements through an intersection radius having a minimum curb radius of 25-feet which ends on NE 71<sup>st</sup> Street. The proposed improvements for this road shall meet the minimum requirements of a "Neighborhood Circulator" road in compliance with Standard Details Manual, Drawing #13." (See Transportation Finding 5 in Engineering Staff Report, Appendix "A")

Counsel for the appellant indicates that the requirement is a disproportionate exaction because the potential traffic generated to and from the site does not warrant the need for the improvement. Engineering Services Staff has provided a response to counsel's claim regarding the need to provide the minimum frontage street improvement at the project site to protect public health, safety and welfare in the area.

The second condition challenged by counsel for the appellant is the requirement to provide adequate landscaping and setback per Table 40.230.080-2 and Table 40.320.010-1.

2. Condition of Approval C-1

"C-1 The applicant shall revise the proposed landscape plan to show:

- "a. On the north, the required landscaping scheme is an L3 in a 10-foot buffer width.
- "b. On the east, the required landscaping scheme is an L2 in a 10-foot buffer width.
- "c. On the south, the required landscaping scheme is an L2 in a 10-foot buffer width. Additional landscaping shall be provided in the section abutting Tax Lot 60 (158634).
- "d. On the west, the required landscaping scheme is an L3 in a 10 foot buffer width. (See Land Use Finding 2)"

Staff will show that the required landscaping is necessary, consistent with the applicable sections of the code in fostering public health, safety and welfare.

Staff adopts by reference, the Type II Development & Environmental Review, Staff Report & Decision issued on July 24, 2004, and the Type II Environmental & Review Staff Report & Recommendation dated July 23, 2004.

The following analysis discuss the engineering and planning basis for imposing these conditions for this project to protect public health, safety, and welfare; all legal arguments are referred to the Prosecuting Attorney for advice.

## **Appeal Issues and Staff Response**

### **Issue #1:**

The appellant is contesting Condition of Approval A-3 in the Engineering Services Staff Report, which states as follows:

“A-3 The applicant shall construct a half-width improvements consisting of 18-foot half-width paved roadway, curb & gutter, and a 5-foot wide sidewalk within the existing half-width right-of-way. The proposed improvements shall be transitioned to match the existing roadways at both ends. The applicant shall continue the half-width improvements through an intersection radius having a minimum curb radius of 25-feet which ends on NE 71<sup>st</sup> Street. The proposed improvements for this road shall meet the minimum requirements of a “Neighborhood Circulator” road in compliance with Standard Details Manual, Drawing #13.”

Specifically, counsel for the appellant argues that frontage improvements cannot be required along NE 134<sup>th</sup> Avenue because the exaction is significantly disproportionate to the impact caused by the project. The appellant had requested a road modification, which was partially approved by the responsible staff; counsel indicates, therefore, that the appeal concerns the partial denial of the road modification request. Counsel states further that the appellant had submitted an estimate showing that the cost of providing the required improvement exceeds the impact from the development.

### **Response to Issue #1:**

The question that needs to be answered in this appeal is: “Are the frontage improvements required of the applicant along NE 134<sup>th</sup> Avenue grossly disproportionate to the impact created?”

The subject property is surrounded by road rights-of-way on four sides. The overall road frontage totals 730 feet, more or less. The appellant submitted a cost estimate with the road modification request that calculated the total costs for the construction and engineering of 800 feet of roadway frontage improvements to be \$49,520 and added a 15% contingency for a total of \$56,948. This total includes surveying and engineering fees estimated to be 50% of the estimated construction cost, which is a substantially higher percentage than is typical for road improvement project. Engineering and survey costs for County road projects typically range from 10-15% of the construction cost. Small projects, which do not benefit from economies of scale, have engineering and survey costs which typically range from 20-25% of the construction cost.

The applicant argues that because it is costly to improve all of the roads surrounding the property, they should not be required to improve any of the roads. Community Development accepted the applicant’s argument that requiring improvements along all road rights-of-way, in strict compliance with the Transportation Standards, would be grossly disproportional to the impacts created. As a result, the applicant was relieved of the requirement to install improvement along NE 71<sup>st</sup> Street, NE Kerr Avenue and NE 135<sup>th</sup> Avenue, which represent approximately 75% of the improvements required by the Transportation Standards. The road modification request states that the traffic impacts

generated by the site will be limited to NE 134<sup>th</sup> Avenue, and NE 134<sup>th</sup> Avenue is the only road on which improvements are being required. Community Development has been responsive to the applicant's concerns and has relieved the applicant of the majority of the burden imposed by the Transportation Standards. However, it is the position of Community Development that the public interest, in this case, improving public safety, is best served by requiring the applicant to be responsible for providing improvements to that portion of the site which they concede is impacted by the traffic generated by the site.

## **Issue #2:**

- A. Counsel opines that staff erred in requiring 10 feet of L2 landscaping on the southwest portion of the site where the site abuts property that is zone light industrial (ML). According to counsel, Table 40.320.010-1, requires an L1 type landscaping within a 5-foot buffer for a light industrial property abutting another light industrial property.
- B. Counsel further states that the applicant is not proposing any landscaping on the southern section of the project site because of potential sight distance deficiency.

## **Response to Issue #2A:**

The examiner will find that Table 40.230.010-2 provides the development standards in the light industrial district. As shown in the table, an industrial building is required to comply with specific lot setback, lot coverage, and building height standards.

Table 40.230.080-2: Lot Setbacks, Lot coverage and Building Height Requirements

	Zone
Subject	ML
Minimum area of new zoning district	None
Maximum area of new zoning district	None
Minimum lot area	10,000 square feet
Minimum lot width	100 feet in all industrial zones
Minimum lot depth	100 feet in all industrial zones
Maximum building height	60 feet for buildings. No height limitation for towers in all industrial zones
Minimum building setback <sup>3, 4</sup>	
Front/street side	20 feet for all industrial zones
Side (interior)	10 feet for all industrial zones
Rear	15 feet for all industrial zones
Maximum building coverage	50 percent for all industrial zones
Minimum landscaped area/type <sup>2</sup>	20 percent

<sup>3</sup> Additional setbacks and/or landscape requirements may apply, particularly abutting residential uses or zones. See CCC 40.320.010.

<sup>4</sup> There is no minimum lot size for utility or tower facilities. All utility or tower facilities shall be setback twenty 20 feet from all property lines, and provide additional landscaping as found in Table 40.320.010-1. See CCC 40.260.250 for requirements for wireless communications facilities.

The side interior setback is 10 feet; but the code also indicates that *staff could require additional setback and/or landscaping where an industrial development abuts a residential use or zone.* (Emphasis added) The use on Tax Lot 60 (158364) is residential. The code here mandates that the review staff is authorized to require additional landscaping (a) when an industrial development abuts a residential use (even within an industrial zone) or (b) when an industrial development abuts a residentially zoned district.

Table 40.320.010-1 provides an even more stringent landscaping scheme to screen an industrial use located in an industrial zone from a residential use located within a single-family residential district. In this case, staff finds that a cyclone fence exists along the north and west sections of Tax Lot 60 (158364) and some trees exist in rear, side, and front yards of the property to provide some screening. But the auto impound business has elected not to provide any landscaping to screen and buffer itself from the residential use.<sup>5</sup> Staff did not make an error in requiring an L2 type landscaping on the southwest section of the site because (a) the requirement is consistent with the directive of the specific code section, Table 40.230.080-2 (Footnote 1) and (2) the requirement is less stringent than the standard in Table 40.320.010-1. In requiring the L2 type landscaping, staff recognizes the need to properly screen the auto impound from the residential use.

**Response to Issue #2B:**

CCC 40.320.010 (B) (2) stipulates that the L2 standard uses a combination of distance and low-level screening to separate uses or development. The standard is applied where a low level of screening sufficiently reduces the impact of a use or development, or where visibility between areas is more important than a greater visual screen. The L2 standard requires enough low shrubs to form a continuous screen three (3) feet high and ninety-five percent (95%) opaque year around. In addition, one (1) tree is required per thirty (30) lineal feet of landscaped area or as appropriate to provide a tree canopy over the landscaped area. Groundcover plants must fully cover the remainder of the landscaped area. A three (3) foot high masonry wall or fence at an F2 standard or a berm may be substituted for shrubs, but the trees and groundcover plants are still required. When applied along street lot lines, the screen or wall is to be placed along the interior side of the landscaped area.

The code also requires that at least 20 percent of the site must be landscaped. In this case, the applicant does not propose any landscaping along the entire southern boundary of the project site. Staff finds that the code does not grant such discretion for a developer to pick and choose sections of the development code he or she would comply with.

Counsel argues that providing landscaping along the along the southern property boundary abutting Tax Lot 60 (158364) would affect the sight distance at the driveway for vehicles entering NE 134<sup>th</sup> Street from the site. Neither the applicant nor counsel has provided any documentation in the record to support this claim. Even though Engineering Services Staff requires and conditions the applicant to address sight distance at the driveway, staff finds that the required L2 type landscaping can still be

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<sup>5</sup> Apparently the auto impound is also used as wreckage yard where individuals could salvage auto parts for re-use.

provided while maintaining adequate sight distance at the driveway. Therefore, a requirement to maintain sight distance at the driveway is not a sufficient reason to eliminate the requirement to provide landscaping along the southwest section of the project site.

## **CONCLUSION**

1. Staff concludes that the condition of approval requiring frontage road improvement along NE 134<sup>th</sup> Avenue is necessary, because the implementation of the condition will mitigate specific potential public safety problem in the area consistent with the county's transportation standards, CCC 40.350.
2. Staff concludes further that the condition of approval requiring an L1 type landscaping along the southwest section of the property abutting a residential use is consistent with the applicable code section, Table 40.230.080-2, which stipulates a mandatory 10 foot side yard setback in the industrial district, and an additional screening where an industrial development abuts a residential use.
3. Staff further concludes that required landscaping could be provided without compromising sight distance for vehicles entering NE 134<sup>th</sup> Street from the project site.

## **RECOMMENDATION**

Based on the above findings and information in the record, the Development Services Manager recommends the Hearings Examiner DENY the appeal, thereby upholding the Planning Director's Decision.

### **Attachments:**

1. Type II Development & Environmental Review Staff Report & Decision
2. Type II Development & Environmental Review Staff Report & Recommendation (Engineering Review)
3. Appeal Letter
4. Affidavit of Mailing
5. Exhibits